

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11 YOLIE PEREZ,

12 Plaintiff(s),

13 v.

14 COMMISSIONER OF SOCIAL SECURITY,

15 Defendant(s).

Case No.: 2:18-cv-02010-APG-NJK

Order

[Docket No. 1]

16 Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*
17 (Docket No. 1), and has submitted a Complaint (Docket No. 1-1).

18 **I. Application to Proceed *In Forma Pauperis***

19 Plaintiff filed an application to proceed *in forma pauperis*. Docket No. 1. The application
20 has sufficiently shown an inability to prepay fees and costs or give security for them. Accordingly,
21 the application to proceed *in forma pauperis* will be granted pursuant to § 1915.

22 **II. Screening the Complaint**

23 When a party seeks permission to pursue a civil case *in forma pauperis*, courts will screen
24 the complaint. *See* 28 U.S.C. § 1915(e). With respect to social security appeals specifically, judges
25 in this District have outlined some basic requirements for complaints to satisfy the Court's
26 screening. First, the complaint must establish that administrative remedies were exhausted
27 pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced within 60 days after
28 notice of a final decision. Second, the complaint must indicate the judicial district in which the

1 plaintiff resides. Third, the complaint must state the nature of the plaintiff's disability and when
2 the plaintiff claims to have become disabled. Fourth, the complaint must contain a plain, short,
3 and concise statement identifying the nature of the plaintiff's disagreement with the determination
4 made by the Social Security Administration and show that the plaintiff is entitled to relief. *See,*
5 *e.g., Graves v. Colvin*, 2015 WL 357121, *2 (D. Nev. Jan. 26, 2015) (collecting cases).

6 The complaint in this case is insufficient.¹ Most significantly, the complaint indicates that
7 Plaintiff disagrees with a decision to deny benefits, but it is not clear which decision is being
8 challenged (*i.e.*, an initial denial, a denial upon reconsideration, a denial by an ALJ, or a denial by
9 the Appeals Council). As such, it is not clear that Plaintiff exhausted her administrative remedies
10 within the Social Security Administration. Similarly, it is not clear when a final decision was made
11 (if one has been made), so the Court cannot determine whether this action was commenced in a
12 timely manner.

13 **III. Conclusion**

14 Accordingly, the Court hereby **ORDERS** as follows:

- 15 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED** with the caveat that the
16 fees shall be paid if recovery is made. At this time, Plaintiff shall not be required to
17 pre-pay the filing fee.
- 18 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
19 prepayment of any additional fees or costs or the giving of a security therefor. The
20 Order granting leave to proceed *in forma pauperis* shall not extend to the issuance of
21 subpoenas at government expense.
- 22 3. The Clerk of Court shall file the complaint.
- 23 4. The complaint is hereby **DISMISSED** without prejudice. If Plaintiff believes she can
24 cure the deficiencies noted herein, an amended complaint shall be filed by November
25 21, 2018. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the
26 Court cannot refer to a prior pleading (*i.e.*, the original Complaint) in order to make the

27 ¹ As Plaintiff is proceeding *pro se*, the Court construes her filings liberally. *Erickson v.*
28 *Pardus*, 551 U.S. 89, 94 (2007).

1 Amended Complaint complete. This is because, as a general rule, an Amended
2 Complaint supersedes the original Complaint. Local Rule 15-1(a) requires that an
3 Amended Complaint be complete in itself without reference to any prior pleading.
4 Once a plaintiff files an Amended Complaint, the original Complaint no longer serves
5 any function in the case. Therefore, in an Amended Complaint, as in an original
6 Complaint, each claim and the involvement of each Defendant must be sufficiently
7 alleged.

- 8 **5. Failure to file an amended complaint as required herein will result in a**
9 **recommendation that this case be dismissed without prejudice.**

10 IT IS SO ORDERED.

11 Dated: October 22, 2018

12 
13 _____
14 Nancy J. Koppe
15 United States Magistrate Judge
16
17
18
19
20
21
22
23
24
25
26
27
28